

AMENDED IN SENATE JULY 7, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1462

**Introduced by Assembly Member Cox
(Principal coauthor: Assembly Member Hertzberg)**

February 26, 1999

An act to *amend Section 7735 of, and to add Section 17530.8* to, the Business and Professions Code, relating to burial containers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1462, as amended, Cox. Burial containers: preneed contracts.

Existing law regulates preneed contracts entered into or solicited by funeral establishments. Existing law also generally regulates advertising in the state and makes it a crime to violate those regulatory provisions.

This bill would enact provisions in the advertising law regulating preneed contracts entered into or solicited by certain retail sellers of caskets, alternative containers, or outer burial containers. In doing so, it would impose a state-mandated local program by expanding the scope of existing criminal provisions.

The bill would specifically state that a retail seller of caskets, alternative containers, or other burial containers is not prohibited from selling those products to a buyer and contracting with the buyer to store the container or casket, subject to certain specified conditions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 7735 of the Business and*
2 *Professions Code is amended to read:*
3 7735. (a) No funeral establishment licensed under
4 the laws of the State of California, or the agents or
5 employees of a funeral establishment, shall enter into or
6 solicit any preneed arrangement, contract, or plan,
7 ~~hereinafter~~ *hereafter* referred to as “contract,” requiring
8 the payment to the licensee of money or the delivery to
9 the licensee of securities to pay for the final disposition of
10 human remains or for funeral services or for the
11 furnishing of personal property or funeral merchandise,
12 wherein the use or delivery of those services, property,
13 or merchandise is not immediately required, unless the
14 contract requires that all money paid directly or
15 indirectly and all securities delivered under that
16 agreement or under any agreement collateral thereto,
17 shall be held in trust for the purpose for which it was paid
18 or delivered until the contract is fulfilled according to its
19 terms; ~~provided, however, that~~. *However,* any payment
20 made or securities deposited pursuant to this article shall
21 be released upon the death of the person for whose
22 benefit the trust was established as provided in Section
23 7737. The income from the corpus may be used to pay for
24 a reasonable annual fee for administering the trust,
25 including a trustee fee, to be determined by the program,
26 and to establish a reserve of not to exceed 10 percent of
27 the corpus as a revocation fee in the event of cancellation
28 on the part of the beneficiary.

1 None of the trust corpus shall be used for payment of
2 any commission nor shall any of the trust corpus be used
3 for other expenses of trust administration.

4 *(b) (1) Nothing in this section shall prohibit a retail*
5 *seller of caskets, alternative containers, or outer burial*
6 *containers from selling these products to a buyer and*
7 *entering into a contract with a buyer to store the casket,*
8 *alternative container, or outer burial container, provided*
9 *that all of the following requirements are met:*

10 *(A) The transaction involves the transfer of title to the*
11 *casket, alternative container, or outer burial container*
12 *from the retailer to the buyer.*

13 *(B) The casket, alternative container, or outer burial*
14 *container is clearly identifiable as the property of the*
15 *buyer.*

16 *(C) The casket, alternative container, or outer burial*
17 *container is stored in a facility that is accessible to the*
18 *program and appropriate to the property being stored.*

19 *(D) The casket, alternative container, or outer burial*
20 *container is stored in a manner that allows the program*
21 *to conduct the audits required by paragraph (2).*

22 *(2) The Funeral Directors and Embalmers Program*
23 *within the Department of Consumer Affairs may inspect*
24 *and audit the storage facilities and practices of retail*
25 *sellers of caskets, alternative containers, or outer burial*
26 *containers to ensure compliance with paragraph (1).*

27 SEC. 2. Section 17530.8 is added to the Business and
28 Professions Code, to read:

29 17530.8. (a) No retail seller of caskets, alternative
30 containers, or outer burial containers shall enter into or
31 solicit any preneed arrangement, contract, or plan,
32 hereafter referred to as "contract," requiring the
33 payment to the retail seller of money or the delivery to
34 the retail seller of securities to pay for a casket, alternative
35 container, or outer burial container wherein the use or
36 ~~delivery is not immediately required~~ *does not occur for*
37 *over 30 days from the date the money or securities are*
38 *delivered, unless the contract requires that all money*
39 *paid directly or indirectly and all securities delivered*
40 *under that agreement or under any agreement collateral*

1 thereto, shall be held in trust for the purpose for which it
2 was paid or delivered until the contract is fulfilled
3 according to its terms. However, any payment made or
4 securities deposited pursuant to this section shall be
5 released upon the death of the person for whose benefit
6 the trust was established as provided in subdivision (c).
7 The income from the corpus of the trust may be used to
8 pay for an annual fee for administering the trust,
9 including a trustee fee, of not more than 4 percent of the
10 trust balance at the end of the calendar year, and to
11 establish a reserve of not to exceed 10 percent of the
12 corpus as a revocation fee in the event of cancellation on
13 the part of the beneficiary.

14 None of the corpus of the trust shall be used for the
15 payment of any commission nor shall any of the trust
16 corpus be used for other expenses of trust administration.

17 (b) For the purposes of this section:

18 (1) "Trustee" mean any banking institution or trust
19 company legally authorized and empowered by the State
20 of California to act as trustee in the handling of trust
21 funds.

22 (2) "Trustor" means any person who pays the money
23 or deposits the securities used for those preneed
24 arrangements.

25 (3) "Beneficiary" means the person for whom the
26 casket, alternative container, or outer burial container is
27 purchased.

28 (4) "Corpus of the trust" includes all moneys paid and
29 securities delivered pursuant to the provisions of this
30 section.

31 (5) "Retail seller of caskets, alternative containers, or
32 outer burial containers" or "retail seller" means any
33 person who provides caskets, alternative containers, or
34 outer burial containers on a retail basis, other than a
35 funeral establishment, a licensed cemetery authority, or
36 a licensed crematory, when those caskets, alternative
37 containers, or outer burial containers are not delivered as
38 soon as payment for the caskets, alternative containers, or
39 outer burial containers is made.

1 (c) All securities purchased by the trustor for deposit
2 in trust and all money received from the trustor for
3 deposit in trust shall be placed in trust with a trustee
4 within 30 days of their receipt by the retail seller pursuant
5 to a trust agreement executed by the retail seller, the
6 trustor, and the trustee. The trust agreement shall
7 provide that the trustee shall hold the money or securities
8 in trust for the purposes for which deposited and that the
9 trustee, shall deliver the corpus of the trust to the retail
10 seller upon presentation by the seller of satisfactory
11 evidence that the retail seller has furnished the casket,
12 alterative container, or outer burial container. The trust
13 agreement shall further provide that at any time before
14 the retail seller has furnished the casket, alternative
15 container, or outer burial container provided for in the
16 contract the trustor or the legally appointed
17 representative may in writing demand and receive the
18 return of the corpus of the trust, together with any
19 income accrued in the trust, less the revocation fee
20 provided for in subdivision (a). The delivery of the corpus
21 of the trust and the accumulated income to the retail
22 seller, trustor, or beneficiary pursuant to the terms of this
23 section and the trust agreement herein referred to, shall
24 relieve the trustee of any further liabilities with regard to
25 that corpus or the income therefrom.

26 (d) All preneed trust funds held by a retail seller shall
27 be subject to an annual, independent certified financial
28 audit. The audit shall be a matter of public record and
29 shall be made available for public inspection. A copy of
30 the audit shall be delivered to the district attorney for any
31 county in which the retail seller conducts business.

32 (e) Every retail seller shall present to the survivor of
33 the deceased who is handling the funeral arrangements
34 or the responsible party a copy of any preneed agreement
35 that has been signed and paid for in full, or in part by, or
36 on behalf of the deceased and is in the possession of the
37 retail seller. The copy may be presented in person, by
38 certified mail, or by facsimile transmission, as agreed
39 upon by the survivor of the deceased or the responsible
40 party.

(f) Nothing in this section shall apply to cemetery commodities or merchandise that is delivered as soon as payment for those items is made.

(g) *(1) Nothing in this section shall prohibit a retail seller of caskets, alternative containers, or outer burial containers from selling these products to a buyer and entering into a contract with a buyer to store the casket, alternative container, or outer burial container, provided that all of the following requirements are met:*

(A) The transaction involves the transfer of title to the casket, alternative container, or outer burial container from the retailer to the buyer.

(B) The casket, alternative container, or outer burial container is clearly identifiable as the property of the buyer.

(C) The casket, alternative container, or outer burial container is stored in a facility that is accessible to the program and appropriate to the property being stored.

(D) The casket, alternative container, or outer burial container is stored in a manner that allows the program to conduct the audits required by paragraph (2).

(2) The Funeral Directors and Embalmers Program within the Department of Consumer Affairs may inspect and audit the storage facilities and practices of retail sellers of caskets, alternative containers, or outer burial containers to assure compliance with paragraph (1).

~~SEC. 2.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.